

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of group II, claims 16-29 and species of xanthenes in claim 22, in the reply filed on May 18, 2011 is acknowledged. The traversal is on the ground(s) that grouping the claims into four groups is improper under the law. It is not right to use common feature in the prior art and break up the claims. Applicants believe that the linking concept for the claims is the attachment of the fluorophore to a binding partner and using a chemical energy-transferring composition to detect the presence or absence of the binding partner.

This is not found persuasive because there were two references cited in the restriction requirement, Mahant and Crutchfield. Applicants argue that Crutchfield fails to teach using the chemiluminescent system in assay. If this was true, Mahant is another reference cited which teaches using the chemiluminescent system of the present invention in assay with binding pair member. Therefore, the concept of using the chemiluminescent system of chemical energy transferring composition and fluorophore as a labeling system in assay is known.

The requirement is still deemed proper and is therefore made FINAL.

Priority

This application 10578054, filed 06/28/2007 is a national stage entry of PCT/US04/36577, International Filing Date: 11/02/2004. Application PCT/US04/36577 Claims Priority from Provisional Application 60517047, filed 11/03/2003.

The effective filing date of this application is 11/3/2003.

Information Disclosure Statement

The IDS submitted on 6/28/2007 has been acknowledged and considered.

Claims Status

Since species Xanthenes has been elected in claim 22, claim 26 is withdrawn because it is drawn to a cyanine dye which is another species in claim 22.

Claims 16-25, 27-29 are being examined.

Claims 1-15, 26, 30-65 are withdrawn from further consideration.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-25, 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Boguslaski et al. (US 4,238,195).

Boguslaski teaches a non-enzymatic, non-fluorescent chemiluminescent system for detecting the interaction between two binding pair members; said system comprises an immobilized binding pair member and a non-immobilized binding pair member labeled with a fluorophore and a solution comprising a chemical energy transferring composition that is photo-reactive with the fluorophore. (see col. 3, lines 28-68; col. 4, line 1-50; col. 8, line 26-col. 11, line 13).

For claims 17-21, Boguslaski teaches that the chemical-energy transferring composition comprises an oxalic type compound such as oxalyl chlorides, oxamide, or bis-oxalate ester. (see col. 3, lines 65-67).

For claims 22-25 and 27, Boguslaski teaches the fluorophore is a Rhodamine B dye which is the same dye used in the present invention (see col. 6, lines 7-19). Thus it is a xanthene with a parent heteroaromatic ring system or parent xanthene ring.

For claim 28, Boguslaski teaches the binding pair members are antibody and antigen; two complementary nucleic acids. (see col. 5, lines 1-42).

For claim 29, Boguslaski teaches the solid support is a plate of silica gel. (see col. 11, lines 29-31).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PENSEE DO whose telephone number is (571)272-0819. The examiner can normally be reached on Monday-Friday, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Shibuya can be reached on 571-272-0806. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pensee T. Do/
Examiner, Art Unit 1641

/Mark L. Shibuya/
Supervisory Patent Examiner, Art Unit 1641